MARK GOTTLIEB

Speaker Pro Tempore
Wisconsin State Assembly

Testimony of Rep. Mark Gottlieb
Assembly Bill 341
Urban & Local Affairs Committee
May 22, 2007

Mr. Chairman and committee members:

Thank you for hearing Assembly Bill 341 (AB 341), relating to fees for acquiring public park land, storm water treatment facilities, the timing of when impact fees must be paid and used, and the costs of certain professional services.

Local units of government (except counties and school districts) may impose an impact fee on a developer to pay for the capital costs to construct certain public facilities. Under current law, municipalities establish the amount of the fee, which must be paid within 14 days of permits being issued.

Last session, the Legislature enacted Act 203, requiring that impact fees not used within seven years must be refunded to the current property owner. Under the Act, the seven year time limit could be extended for three years if the municipality adopts a resolution that:

1. states that it needs an additional three years to use the impact fees, due to extenuating circumstances or hardship in meeting the seven year limit, and
2. specifies the extenuating circumstances or hardship.

These provisions applied retroactively to impact fees in effect as of April 11, 2006.

The Legislature also enacted Act 477 last session, changing the impact fee law and imposing certain requirements on plat approval conditions. Among other things, the Act:

- required municipalities to use segregated accounts for impact fees.
- prohibited a fee in lieu of land dedication for parks.
- deleted "county" from the list of municipalities authorized to impose an impact fee.

STATE REPRESENTATIVE • 60TH DISTRICT

Capitol Office: Post Office Box 8952 • Madison, Wisconsin 53708-8952 (608) 267-2369 • Toll-Free: (888) 534-0060 • Fax: (608) 282-3660 • Rep.Gottlieb@legis.wi.gov
District: 1205 Noridge Trail • Port Washington, Wisconsin 53074 • (262) 268-6998

Assembly Bill 341 addresses several concerns expressed about the changes that were made last session, as well as making several other changes to subdivision and impact fee law. It does the following:

- Restores the ability of municipalities to accept a fee in lieu of park land dedication and certain initial improvements, provided that the fee bears a rational and proportionate relationship to the need for the improvement.
- Prohibits a municipality from increasing development related "pass through" fees for engineering and legal services above the amount that it pays for the service.
- Extends the time period during which impact fees must be used from seven years to ten years, and allows for a three year extension, provided that detailed, written findings are submitted to justify the extension.
- Clarifies the dates by which fees collected prior to Act 203 must be used.
- Changes the time at which impact fees must be paid to either a time mutually agreed to by the parties, or no later than the earliest of (a) five years after final approval of the development, (b) issuance of a building permit, or (c) issuance of an occupancy permit.
- Provides that the dedication of lands in a subdivision plat for storm water facilities must be accepted when at least 80 percent of the lots in the subdivision have been sold and the storm water facilities are certified to be properly functioning.

This bill was developed through negotiation with representatives of state associations for local government, builders, and realtors. It attempts to address concerns that each group has raised with particular provisions in current law.

I appreciate the opportunity to testify today, and will be happy to answer any questions you may have.

Memorandum

Date: **May 22, 2007**

To: **Urban and Local Affairs Committee**

From: **Wisconsin Builders Association**

RE: **AB 341**

The Wisconsin Builders Association and its members have worked closely with Representative Gottlieb, the Wisconsin Towns Association, the Wisconsin Realtors Association and the League of Wisconsin Municipalities to draft changes to the current impact fee statutes, introduced as Assembly Bill 341.

AB 341 has many positive provisions which our Association supports. The bill:

- Provides more clarity about the timing of land dedication for storm water facilities in a subdivision plat.
- Prohibits a municipality from increasing development-related "pass through" fees for engineering and legal services above the amount that a municipality pays for the service.
- Requires municipalities to make detailed, written findings when extending the time period during which impact fees are used.
- Clarifies the required use of fees collected prior to enactment of 2005 Acts 203 and 477.
- Reauthorizes the collection of fees in lieu of park land dedication, subject to an assurance that they bear a rational relationship to and are proportional to the need for them.
- Requires a municipality to look at the cumulative effect of all impact fees on housing affordability in their community.

We support AB 341, recognize the complex issues that it seeks to address, and are continuing to work with the author to fine tune some of the language in the bill.

We appreciate the willingness of the author, and the other organizations, to negotiate and compromise on issues related to the timing of impact fees, pass-through consultant fees, and the ownership of storm water ponds and facilities.

If you have any questions or need additional clarification, please contact our Association at (608)242-5151.

122 W. Washington Avenue
Suite 300
Madison, Wisconsin 53703-2715

608/267-2380
800/991-5502
Fax: 608/267-0645

E-mail: league@lwm-info.org
www.lwm-info.org

To: Assembly Committee on Urban and Local Affairs

From: Curt Witynski, Assistant Director, League of Wisconsin Municipalities

Date: May 22, 2007

Re: Support for AB 341, Relating to Impact and Park Land Dedication Fees

The League of Wisconsin Municipalities supports AB 341, reversing some of the impact fee law changes that were made last session. Many municipalities were caught by surprise last year when sweeping changes to the impact fee and subdivision approval laws were enacted in the final weeks of the session. This compromise legislation has bipartisan support and is the product of negotiations between builders and local government groups. It restores some much needed balance to this area of the law. We appreciate Rep. Gottlieb's hard work on this bill.

Good things AB 341 does for municipalities:

- Extends the time period in which impact fee revenue must be used from 7 years to 10 years and maintains the option for a three-year extension if the municipality justifies the need for the extension in writing.
- Fixes the unfair retroactive application of 2005 Wis. Act 203.
- Requires that all impact fees imposed on a development must be paid within five years after the municipality grants final approval for the development even if not all of the lots have been sold or no building permits issued.
- Makes impact fee payments due at time building permit is issued instead of within 14 days of the date building permit is issued.
- Restores the ability of a municipality to charge fees for park land and certain park improvements as a condition of approving new subdivisions.

For the above reasons we urge you to recommend passage of AB 341. Thanks for considering our comments.

Ruekert·Mielke
engineering solutions for a working world

May 21, 2007

Mr. Francis Thousand
Chair
WSLS Legislative Advisory Committee
5113 Spaanem Ave.
Madison, WI 53716

Representative Mark Gottlieb
Room 309 North
State Capitol
P.O. Box 8952
Madison, WI 53708

RE: 2007 Assembly Bill 341

Dear Mr. Thousand:

The purpose of this letter is to communicate Ruekert/Mielke's comments on 2007 Assembly Bill 341 and to request that our comments be included in the record of the public hearing scheduled for May 22, 2007.

In general it is our opinion that this bill improves upon the current impact fee law in several respects.

We have no objection to requiring a public facilities needs assessment prepared under §66.0617(4) to consider the cumulative effect of all existing and proposed impact fees on the availability of affordable housing.

The amendment to §66.0617(6)(g) would be an improvement to the current law. It is our opinion that municipalities should be allowed to collect impact fees as a condition of subdivision plat approval or other development approval. This is particularly important for sanitary sewer, water supply, roads, and storm water facilities, which must have adequate capacity available before a municipality allows new development to occur. The current law places a huge financial risk and burden on fast-growing municipalities that need to finance significant improvements to their facilities, such as expansions to Wastewater Treatment Facilities or new wells and water towers. The primary means of shielding existing ratepayers and taxpayers from bearing these costs is impact fees. However, if impact fees are not collected until a building permit or occupancy permit is issued, it may be a very long time, if ever, before the municipality recovers the full cost of capital improvements made to serve new development. The only recourse to cover debt service for these improvements in the meantime is to raise taxes or utility rates or issue additional municipal debt. We are working with several small municipalities right now that are in the process of expanding their wastewater treatment facilities to serve anticipated development. These municipalities are implementing impact fees to recover the share of costs related to new development, but may face sewer rate increases in

W233 N2080 Ridgeview Parkway • Waukesha, Wisconsin 53188-1020
(262) 542-5733 • Fax: (262) 542-5631 • www.ruekert-mielke.com

the range of 100 - 200% if new subdivisions that are being developed now do not build out as fast as anticipated. This is a risk that municipalities should not have to carry, especially considering other limitations and mandates that have been placed on them in recent years.

For these reasons, we appreciate and support the addition of the provision allowing municipalities to collect impact fees no later than 5 years after final approval is granted for a land development. Although there still may be circumstances where it would be financially difficult to carry the costs of certain improvements for 5 years, this provides an end date by which such costs will be recovered.

We support the proposed amendments to §66.0617(9) to extend the amount of time for expending impact fees and to clarify how the time limit applies to fees collected prior to April 2006. Considering that the typical planning and financing periods for major public infrastructure is twenty years or more, we felt that a seven-year time limit for expending impact fees was unreasonably short. We also had concerns regarding the application of the seven-year limit to municipalities that had adopted fees more than seven years ago and had allowed themselves longer time periods to spend the fees under the law in effect at the time. The proposed bill addresses both of these concerns.

The final provisions of AB 341 that we would like to address are the amendments to §236.45 to allow fees for the acquisition or improvement of land for public parks. As explained above, we are of the opinion that municipalities should be allowed to collect impact fees at the time of subdivision plat or other development approval. However, since §66.0617 contains more detailed and rigorous requirements for how such fees are imposed and managed, we believe that all such fees should be imposed under that statute. In addition, we believe that the proposed definition of "improvement of land for public parks" is too narrow and does not allow for the development of a full service park. Most parks are equipped with facilities beyond landscaping, sidewalks, playground equipment and restroom facilities. The proposed amendment is specific enough that it appears that it would not allow for municipalities to use park improvement fees for a wide range of fairly standard park amenities, such as pavilions or shelters, picnic tables, ball diamonds, soccer fields, volleyball or basketball courts, tennis courts, bicycle and pedestrian trails and other facilities.

Our other concern with this provision is that it does not address the ambiguity of the current law regarding what facilities park impact fees may be used for. The removal of the "other recreational facilities" from the list of impact fee-eligible costs and the current language allowing impact fees to be used for "parks, playgrounds and land for athletic fields" has created confusion regarding standard park amenities such as those described above. Are such facilities allowed because they are standard park amenities and the statute allows the use of impact fees for parks? Or are such facilities excluded because they are considered to be "other recreational facilities"? In our opinion, such facilities should be allowed as part of a typical full-service park. We would like to see the wording of §66.0617 changed to make it clear that these types of facilities are eligible for recovery through impact fees. Our concern is that the current

proposal, by inserting a more limited definition of park improvements in §236.45, would lend support to the idea that the use of impact fees must also be limited to a narrow range of park improvements that does not include such facilities as ball diamonds and volleyball courts.

In closing, we appreciate your attention to this important issue for local municipalities and this opportunity to submit our comments regarding the proposed bill. In general, we support the proposed bill. However, we do have some remaining concerns that we would like to see addressed more completely, as described above.

If you have any comments or questions regarding this letter, please feel free to contact me or Bill Mielke at Ruekert/Mielke.

Very truly yours,

RUEKERT/MIELKE

Christine A. Cramer
Financial Analyst

CAC:rmm

cc: William J. Mielke, P.E., R.L.S, Ruekert/Mielke
File